

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

<hr/>)	File No.: UAO-NE-07-4003
In the Matter of:)	FMF No.: 39545
)	
New Ventures Associates LLC)	
Crow Lane Landfill Closure)	ADMINISTRATIVE ORDER
)	
Newburyport, Massachusetts)	April 12, 2007
<hr/>)	

I. THE PARTIES

1. The Department of Environmental Protection ("Mass DEP" or "the "Department") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, §7. The Department maintains its principal office at One Winter Street, Boston, Massachusetts and a Northeast Regional office at 205 B Lowell Street, Wilmington, Massachusetts 01887.
2. New Ventures Associates, LLC ("New Ventures") is a Delaware corporation with a business address at 85-87 Boston Street, Everett, Massachusetts 02149. New Ventures is the current owner and operator of the Crow Lane Landfill located on Crow Lane in Newburyport, Massachusetts (the "Facility").

II. STATEMENT OF FACTS AND LAW

3. The Department is responsible for the implementation and enforcement of M.G.L. c. 111, §150A and §150A½, and the regulations promulgated thereunder at 310 CMR 16.00 and 310 CMR 19.000.
4. The Department's authority to issue this Order is conferred by M.G.L. c. 111, §150A and §150A½, and the regulations promulgated thereunder at 310 CMR 16.00 and 310 CMR 19.000.
5. The Facility is an uncapped, unlined, and inactive landfill. New Ventures purchased the site on which the Facility is located from City Landfill Trust of Hampton Falls, New Hampshire in April of 2000.

6. On February 27, 2003, the Department and New Ventures entered into an Administrative Consent Order, ACO-NE-05-4004 (the "ACO") for the closure and capping of the Facility. Paragraph 21 of ACO required, in part, that New Ventures shall perform the actions required by the ACO in accordance with M.G.L. c. 111, §150A and M.G.L. c. 111, §150A1/2, and the regulations promulgated thereunder at 310 CMR 16.00 and 19.000, the MassDEP's July 6, 2001 *Revised Guidelines for Determining Closure Activities at Inactive Unlined Landfill Sites*, MassDEP's May 1997, *Landfill Technical Guidance Manual*, and all other applicable federal, state and local laws, regulations and approvals.
7. On October 20, 2006, the Suffolk Superior Court entered a preliminary injunction in *Commonwealth v. New Ventures Associates, LLC*, Civil Action No. 06-0790 C. This preliminary injunction required New Ventures to take certain actions at the Facility related to, *inter alia*, the control of landfill gas emissions and the final capping and closure of the landfill. The preliminary injunction was amended by order of the Court on November 1, 2006 and February 22, 2007.
8. As a result of discussions concerning New Ventures' compliance with the preliminary injunction and other issues not covered by the preliminary injunction related to, *inter alia*, wind blown litter, MassDEP, by email correspondence on January 3, 2007 provided New Ventures with a list of actions, attached hereto as Exhibit 1, that must be performed at the Facility to control odors and excessive blowing litter and to minimize the infiltration of water in areas where active filling was occurring. These required actions included the placement of daily cover consisting of one or more of the following: tarps, six (6) inches of soil, or a spray on coating approved by the Department.
9. On March 23, 26, 28 and 30 and April 2, 5, 9 and 11, 2007, representatives of MassDEP inspected the Facility and observed excessive wind blown litter which was blowing or had blown onto abutting properties and adjoining areas of Crow Lane. The litter consisted principally of shredded plastic that is present in the Construction and Demolition Fines and Residuals (C & D Material) used as grading and shaping material at the Facility. MassDEP representatives observed the litter being blown from areas of the landfill where C & D Material is exposed, including inactive areas that were not covered by tarps as required by the preliminary injunction including, without limitation the south slope of the landfill along Crow Lane, and active working areas of the landfill including, without limitation as the to of the haul road and areas where C & D Material was being discharged from trucks and placed.
10. On March 28, 2007, Mr. John A. Carrigan, the Solid Waste Section Chief for MassDEP's Northeast Regional Office, Mr. Michael Quatromoni of SITEC Environmental, Inc. (SITEC), New Ventures' consultant and the Engineer of Record for the closure of the Facility, by email that MassDEP representatives had observed excessive litter at the Facility which had blown from the Facility onto abutting properties and Crow Lane. Mr. Carrigan informed Mr. Quatromoni that he must address this problem in his inspection of the Facility scheduled for March 30, 2007.

11. On April 4, 2007, MassDEP received an email from Mr. John Morris, the Director of the City of Newburyport Health Department stating that Mr. Morris and Mr. David Madden, who monitors activities at the Facility pursuant to the City of Newburyport's Noisome Trade Site Assignment for the Facility, observed excessive litter blowing from the Facility onto abutting properties and Crow Lane.
12. The Company is in noncompliance with M.G.L. c. 111, §§ 150A and 150A1/2, and 310 CMR 19.000 because the Company has failed to conduct its operations in a manner that minimizes blowing litter; to implement adequate measures to prevent the scattering of solid waste (litter) from beyond the work area; or to maintain the cleanliness of the Facility and surrounding areas impacted by blowing litter.
13. Based on the foregoing, the Department has determined that New Ventures has violated the following requirements:

SOLID WASTE, M.G.L. c.111, §150A and §150A½

- a. 310 CMR 19.015 – Compliance, which reads in part:

“No person shall construct, modify, operate or maintain a facility except in compliance with a site assignment, permit or plan approved by the board of health or the Department, as applicable, and any authorizations issued by the Department and all conditions included in a permit, approval or authorization for said facility.”

- b. 310 CMR 19.043(5) – Conditions for Permits and Authorizations, which reads in part:

“(a) Duty to Comply. The permittee shall comply at all times with the terms and conditions of the permit or approval, 310 CMR 19.000, M.G.L. c. 111, § 150A and all other applicable state and federal statutes and regulations.

.....

(c) Duty to Halt or Reduce Activity. The permittee shall halt or reduce activity whenever necessary to maintain compliance with the permit conditions, or to prevent an actual or potential threat to the public health, safety or the environment.

...

(d) Duty to Mitigate. The permittee shall remedy and shall act to prevent all potential and actual adverse impacts to persons or the environment resulting from non-compliance with terms or conditions of the permit or approval. The permittee shall repair at his own expense all damages caused by such non-compliance.

...”

c. 310 CMR 19.130(17) –Litter Control, which reads:

- (a) Landfill operations shall be conducted so as to minimize blowing litter.
- (b) The operator shall incorporate litter fencing, natural barriers or other devices to prevent the scattering of solid waste beyond the working area.
- (c) The operator shall maintain the general cleanliness of the facility and surrounding areas impacted by blown litter from the facility or the access roads.

III. DISPOSITION AND ORDER

For the reasons set forth above, the Department hereby issues the following Order.

14. New Ventures shall:

- a. Immediately upon receipt of this Order undertake measures to ensure that excessive amounts of litter do not leave the working area and inactive areas of the Facility and that wind-blown litter is routinely cleaned-up at the Facility. These measures shall include, without limitation: (i) the placement of tarps over inactive areas of landfill with exposed C & D Material, as required by the Preliminary Injunction; and (ii) the placement of tarps and/or a minimum of six (6) inches of soil over the exposed C & D Materials in active areas at the end of each working day.
- b. Within five (5) days of the date of this Order, clean up wind blown litter observed on abutting properties and Crow Lane.
- c. Within seven (7) days of the date of this Order, submit for the Department’s review and approval a plan to control wind blown litter leaving the Facility.

15. This Order shall be binding on New Ventures and on its officers, employees, agents, successors, licensees and assignees. New Ventures shall not violate this Order and shall not allow or suffer its officers, employees, agents, successors, consultants, assignees, licensees or contractors to violate this Order. Violation of this Order by any of the foregoing shall constitute a violation of this Order by New Ventures. New Ventures shall provide a copy of this Order to each successor, licensee or assignee concurrent with establishing any succession, license or assignment.

IV. SUBMISSIONS

16. All submissions made to the Department by New Ventures shall be certified in accordance with the applicable provisions of 310 CMR 19.000, including but not limited to the requirements of sections 310 CMR 19.011, 19.031(11), and 19.043. All submissions required under this Order, other than as provided in Paragraph 20, must be addressed to:

John A Carrigan
Solid Waste Section Chief
Massachusetts Department of Environmental Protection
Northeast Regional Office
205 Lowell Street
Wilmington, Massachusetts 01887

V. RESERVATION OF RIGHTS AND AUTHORITY

17. Nothing in this Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting any legal or equitable right of the Department to (i) enforce compliance with the Order, seek further or additional preliminary injunctive relief, or seek any and all other relief sought in the Complaint in *Commonwealth v. New Ventures Associates, LLC*, Civil Action No. 06-0790 C, including, without limitation, the Commonwealth's claims for civil penalties for violations of G.L. c. 111, § 150A, G.L. c. 111, §§ 142 A-O, and G.L. c. 111, §§ 122 and 123; (ii) issue any additional administrative orders, or to seek any other relief, including penalties, with respect to the subject matter covered by this Order, or (iii) any legal or equitable right of the Department to pursue any other claim, action, suit, cause of action, or demand which the Department may have with respect to the subject matter covered by this Order, including, without limitation, any action to enforce this Order in an administrative or judicial proceeding.
18. New Ventures is advised that if it fails to comply with this Order:
 - a. An administrative penalty may be assessed for every day from the effective date that New Ventures is in non-compliance with the requirements described in this Order.
 - b. Notwithstanding the foregoing, issuance of this Order by the Department does not limit the Department's right to initiate other enforcement with regard to the Facility or any other matter, including noncompliance with the requirements cited in this Order. The Department reserves the right to exercise the full extent of its legal authority in order to obtain full compliance with all applicable requirements, including but not limited to criminal prosecution, civil action including court imposed civil penalties or administrative penalties imposed by the Department.
 - c. M.G.L. c. 111, §§ 142A, 150A and §150A1/2, provide for civil penalties of up to twenty five-thousand dollars (\$25,000) per day for each day a violation of this Order occurs.
19. This Order shall not be construed as, or operate as, relieving New Ventures or any other person of the necessity of complying with all applicable federal, state and local laws and regulations.

VI. HEARING RIGHTS

20. You are hereby notified of your right to an adjudicatory hearing under the Massachusetts Administrative Procedures Act, G.L. Chapter 30A, Section 10, regarding this Order. In accordance with the Department's Rules for Conduct of Adjudicatory Proceedings, 310 CMR 1.00, and 310 CMR 19.081(5), you shall be deemed to have waived your right to an adjudicatory hearing unless within twenty-one (21) days of the date of service of this Order the Department receives a Notice of Claim for Adjudicatory Hearing. A Notice of Claim for Adjudicatory Hearing must state clearly and concisely the facts which are grounds for the proceedings and the relief sought; and must include the appropriate filing fee and Fee Transmittal Form.

A Notice of Claim for Adjudicatory Hearing must be addressed to:

Docket Clerk
Office of Administrative Appeals
Department of Environmental Protection
One Winter Street
Boston, Massachusetts 02108

A copy of said Notice of Claim must be sent to:

Richard J. Chalpin
Regional Director
Department of Environmental Protection
Northeast Regional Office
205B Lowell Street
Wilmington, Massachusetts 01887

FILING FEE: the hearing request must be accompanied by a valid check payable to the Commonwealth of Massachusetts in the amount of \$100.00. The check for the filing fee must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
P.O. Box 4062
Boston, Massachusetts 02211

- (1) The hearing request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver as described below.

- (2) **EXCEPTIONS:** The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority.
- (3) **WAIVER:** the Department may waive the adjudicatory hearing filing fee for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file, together with the hearing request as provided above, an affidavit setting forth the facts believed to support the claim of undue financial hardship.

VII. AUTHORITY

So Ordered,
Department of Environmental Protection,

is on file at the DEP office listed on the letterhead.

By: RJC
Richard J. Chalpin, Regional Director
Northeast Regional Office
205B Lowell Street
Wilmington, Massachusetts 01887

Date: 4/12/07

EXHIBIT 1

January 3, 2007

Email Correspondence

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

From: Carrigan, John (DEP)

Sent: Wednesday, January 03, 2007 9:10 PM

To: Richard A. Nylen Jr. (rnylen@ldnllp.com)

Cc: Matt Ireland; WThibeault; Crowlandfill@verizon.net; OBrien, Heidi (DEP); Dingle, Mike (DEP); Chalpin, Richard (DEP)

Subject: Actions Items - Order and Noncompliance with Paragraph 1(h) Pre-treatment System

Importance: High

Attachments: NV_PlaceMatPhaseIA07_01_03.doc

Chip:

The attached document summarizes the activities that New Ventures must perform to resume the placement of C&D Material at the site. Please note that the document also includes in Section D three additional compliance issues that New Ventures must address. The attached document has also been modified to reflect that, as discussed below, the pre-treatment system is not operating in accordance with the performance standard of Appendix A Section D. New Ventures must immediately take all steps necessary to comply with the provisions of Paragraph 1(h) of the Order.

MassDEP's contractor, Shaw Environmental, is routinely collecting drager tubes samples of the H₂S concentrations at the inlet, the mid-point (between the treatment vessels), and outlet (inlet to the flare) of the pre-treatment system. On Tuesday January 2, 2006 are contractor measured the following concentrations of H₂S at these points at approximately 5 PM; the concentrations measured by New Ventures yesterday evening are also included. Sandy McMurtry provided me with the New Ventures data at my request this evening (attached email).

	<u>MassDEP/Shaw</u> <u>approximately 241 cfm]</u>		<u>New Ventures (ppm)</u>			<u>[flow rate of</u>
	1/2/06 approx. 5 PM	1/2/06 5 PM	9 PM	1/3/06 1 AM	5 AM	5 PM
System Inlet:	24,000 ppm	20,000	19,000	20,000	20,000	18,000
System Mid-point:	10,000 ppm	NS	NS	NS	NS	NS
Outlet (inlet to flare):	4,000 ppm	3,200	3,000	3,200	2,800	3,000

Appendix A Section D. 2. provides that "The pre-treatment system shall be considered to be in compliance with the performance criteria of D.1.c. and D.1.d. above provided that the H₂S concentration of the landfill gas into the flare [Outlet (inlet to flare) in the above table] does not exceed the minimum destruction efficiency of 95% reduction of H₂S or the 1.01 lbs/hr H₂S criteria for any two hours during a twenty-four hour period. In determining compliance with these requirements, any single sample shall be considered to be represent 1 hour, unless a minimum of 4 samples are collected over an hourly period and averaged on a time weighted-basis."

Based on the samples of the inlet and outlet pre-treatment samples collected by MassDEP's contractor and New Ventures since approximately 5 PM yesterday, January 2, 2007 the pre-treatment is not in compliance with the performance criteria of Appendix A Section D. 1. Therefore, New Ventures is in noncompliance with the requirements of the Order including, without limitation Paragraph 1(h). New Ventures shall immediately take all actions necessary to comply with the provisions of Paragraph 1(h).

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

This email shall serve as written notice to New Ventures pursuant Paragraph 9 of the Order with regards to noncompliance with the provisions of Paragraph 1(h). MassDEP reserves its rights to exercise the full extent of its legal authority in order to obtain full compliance with the provisions of the Order and all statutes and regulations implemented by the MassDEP including, without limitation 310 CMR 19.000 the Solid Waste Management Regulations and 310 CMR 7.00 the Air Pollution Control Regulations.

The attached document is write protected.

Sincerely,

JohnC

John A. Carrigan, Chief
Solid Waste Management Section
Bureau of Waste Prevention
Northeast Regional Office Massachusetts Department of Environmental Protection
205B Lowell Street
Wilmington, MA 01887

Phone: (978) 694-3299

Fax: (978) 694-3499

For Intra-Agency Discussion Only

January 3, 2007

A. Conditions For NVLLC To Place 14 Trucks Per Day At 1:1 Mix In Phase IA Disposal Requirements

NVLLC must be in compliance with the requirements of Paragraph 4 and the following remaining items in the Order:

- As required by Paragraph 1(h), continue 24/7 operation of the temporary landfill gas pretreatment system with demonstrated effectiveness. This requires the submission of flow measurements and Dräger tube analysis pursuant to Appendix A and the collection and analysis of the required laboratory analytical samples from the influent and effluent landfill gas of the pre-treatment system.

Note, Appendix A, Section E, "Pre-Treatment System Initial Startup – Demonstration System Operation" states, "Upon installation and start-up of the 24/7 pre-treatment system New Ventures shall, every four hours during the initial forty-eight (48) hours of operation of the pre-treatment system, sample the inlet into the pre-treatment system and the outlet of each active vessel of the pre-treatment system for H₂S and measure the flow rate into the flare. When the last four hour sampling event is performed at the end of the start-up period (that is, the sample collected at the 48th hour of operation) New Ventures shall also collect from the inlet and the outlet of the pretreatment system samples of landfill gas for laboratory analysis of sulfide compounds (sulfides, mercaptans, and thiols) using EPA Method 15 using GC/FPD or equivalent. If the readings meet the LFG Pre-Treatment System Performance Criteria for the 48-hour period then the pretreatment system will be considered to be operational. Thereafter New Ventures shall comply with the LFG System Monitoring requirements of Section F LFG System Monitoring below."

Also, as described in the email accompanying this document, the pre-treatment system is in noncompliance with the performance standards of Appendix A Section D. of the Order. Therefore, pursuant to Paragraph 9 of the Order the resumption of the receipt or placement of C & D Fines and Residuals at the landfill by New Ventures requires approval by MassDEP that the pre-treatment system is operating in accordance with the performance standards of Appendix A.

- As required by Paragraphs 2 and 1(j), place tarps in "all areas of the Site containing construction and demolition waste fines and residual materials ("C&D Material") that are not currently tarped, with the exception of areas that in the past twenty four (24) hours have undergone filling, grading, shaping, or Geocomposite gas collection system installation activity, which areas shall be completely covered at all times when no work on that area is in progress, using removable, impervious tarps or poly sheeting at least 11 millimeters thick." These areas include:

- 1) the south slope of the north side at the top of the haul road (including placing tarps) or;

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

- 2) the lobe to the northeast of the flare (approximately 6 foot strip and to the toe of slope);
- 3) the south slope of the landfill in the Phase IA Area where C&D Fines and residuals have been placed;
- 4) Any area of the west slope that is not active pending installation of the FML.

Note that pursuant to 310 CMR 19.130(15)(c) at the end of each day for any active fill area and/or areas that in the past twenty four (24) hours have undergone filling, grading, shaping, daily cover shall be placed within active areas to control blowing litter, odors, and to minimize the infiltration of water in areas in which active filling is occurring. Such daily cover may consist of either a minimum of 6" of soil, removable tarps or a spray on coating approved by the MassDEP pursuant to paragraph 2 of the Order. Soil used as daily cover may be used for purposes of mixing with C & D material that is placed directly upon it when activity is resumed in that area.

- Permission for disposal of spent Sulfa-Bind at the Landfill.
- As required by Paragraph 1(x), complete the placement of hay bales and silt fences as follows.
 - 1) Extend along the east side of the landfill to the southeast and northeast to the easterly property line (stone wall) as originally staked;
 - 2) Extend along the toe of the northern berm to Basin 2;
 - 3) Extend along the southwest corner to the area of Crow Lane and the site of post-leachate discharges.
- As required by Paragraph 1(u), Leachate Control Measures – implement measures to mitigate and control the release of leachate to surface water; begin performing with the following:
 - 1) Determine and document the 80% capacity level for each tank (100% capacity level is the elevation of the lowest invert to each tank);
 - 2) Determine and record the leachate levels in each tank on at least a daily basis with the exception of Tanks 4 and 5 which should be monitored periodically during the day to evaluate the flow rate;
 - 3) Commence and record the pumping of all tanks as necessary to maintain the level of leachate at 80% capacity or less to prevent system bypass and leachate breakouts;

- 4) Address the leachate seeps identified at the base of the berm immediately to the west of Tank 3 and approximately 100 feet east of basin 2 by initially placing soil or emulsion and monitoring the seeps daily;
- 5) Address the leachate seep at the base of the haul road by the placement of tarps, soil or emulsion on the north side of the haul road; if that is unsuccessful, modify/expand the collection system to Tank 1 to include the leachate discharge on the north side of the haul road at its base by expanding the French drain.
 - As required by Paragraph 1(m), submit a revised Closure Plan Schedule to reflect incorporation of the final berm design based on the geo-technical evaluation performed pursuant to Paragraph 1(p).
 - As required by Paragraph 1(s), complete installation of sampling ports, final valves, etc. for EW-11 and EW-12.
 - Receipt of written authorization from DEP to begin filling Phase IA pursuant to Paragraph 4.

B. Conditions To Place 24 Trucks Per Day At 1:1 Under The Order

Comply with the provisions of Paragraph 5 of the Order including without limitation:

- As required by Paragraph 1(r)(ii), complete installation of FML in Phase I Area, including without limitation anchoring and connection and operation of the Geocomposite gas vent system.
- As required by Paragraph 1(u), manage and mitigate contaminated leachate in basins and prevent discharge to surface water.
- As required by Paragraph 1(v), evaluate, maintain and expand as necessary the leachate collection system including implementing measures to control and mitigate leachate releases to the east and SW of the site. Submit for Department approval and implement a leachate control plan.
- As required by Paragraph 1(w), install the storm water swale to Basin 2 on the berm within the Phase I Area.
- Receipt of written authorization from DEP to begin placing up to 24 truckloads of C&D material per day pursuant to Paragraph 5.

C. Conditions To Place 35 Trucks Per Day At 1:1 Under the Order

Comply with the requirements of Paragraph 6 of the Order including, without limitation:

- As required by Paragraph 1(r), complete installation of the FML and gas geo-composite vent system on Phase I & II (anchored and gas system connected);
- As required by Paragraph 1(d), install and operate 24/7 with demonstrated effectiveness per Appendix A the permanent landfill gas pretreatment system.
- Receipt of written authorization from DEP to begin placing up to 35 truckloads of C&D material per day pursuant to Paragraph 6.

Other Issues

- Repair and expand the truck dry wash at the base of the haul road such that trucks existing and entering either over or around the scale pass through the dry wash.
- Sweep and maintain the access road (Crow Lane) into the landfill as necessary to control and prevent the emission of road dust the street sweeper does not appear to be operating properly (vacuum, spray etc.).
- Appendix A Section I.1.h. of the Order requires that "New Ventures in accordance with 310 CMR 19.011 shall certify all information and reports submitted to MassDEP. The Engineer pursuant to 310 CMR 19.011 shall certify all status reports and documents submitted to MassDEP by the Engineer." 310 CMR 19.011 reads in whole:

"(1) Certification. Any person, required by 310 CMR 19.000 or any order issued by the Department, to submit papers shall identify themselves by name, profession, and relationship to the applicant and legal interest in the facility, and make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information including possible fines and imprisonment."

(2) Engineering Supervision. All papers pertaining to design, operation, maintenance, or engineering of a site or a facility shall be completed under the supervision of a Massachusetts registered professional engineer knowledgeable in solid waste facility design, construction and operation and shall bear the seal, signature and discipline of said engineer. The soils, geology, air modeling, air monitoring and groundwater sections of an application or monitoring report shall be completed by competent professionals experienced in the fields of soil science and soil engineering, geology, air

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

modeling, air monitoring and groundwater, respectively, under the supervision of a Massachusetts registered professional engineer. All mapping and surveying shall be completed by a registered surveyor.”

This includes without limitation, certification of the daily landfill gas monitoring reports submitted to New Ventures by facsimile.